

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session

Friday, April 7, 2000

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:11 a.m. at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners Bill Deaver, Kathleen Makel, Carol Scott and Gordana Swanson were present.

Item #1. Approval of the Minutes of the March 3rd, 2000 Commission Meeting.

The minutes of the March 3rd, 2000, Commission meeting were distributed to the Commission and made available to the public. There being no objection, the minutes were approved.

Item #2. Public Comment.

There was no public comment.

Item #3. Announcement of Personnel Action - Appointment of Wayne Strumpfer as Executive Director.

Chairman Getman announced that at its last closed session, after interviewing for the position of Executive Director of the FPPC, the Commission voted unanimously to appoint Wayne Strumpfer to the position.

Item #5. Request from the Los Angeles Ethics Commission for Reconsideration of the Commission's Fontana Opinion.

Commissioner Carol Scott commended the staff on the work that was done on the report presented to the Commission for consideration.

Commission Counsel Deborah Allison presented options for reconsideration of the *Fontana* opinion, pursuant to a request from the Los Angeles Ethics Commission (Ethics Commission). She noted that the Commission had requested in November that staff explore "earlier reporting" by groups supporting or opposing a Local Agency Formation Commission (LAFCO) boundary change. Ms. Allison added that legal staff presented a status memo in January which indicated that staff would talk to a number of people for input.

Ms. Allison explained that the Ethics Commission requested the reconsideration because there are several secession groups in the Los Angeles area which are trying to secede from the city of Los Angeles, and that, currently, none of those groups are required to report their contributions or

expenditures under the Commission's *Fontana* opinion. Under the LAFCO process, petitions are gathered and submitted to LAFCO, and that body does a feasibility study. After that study is done, Ms. Allison explained, the proposal would be placed on the ballot, and at that point a group would become a committee with reporting obligations. This contrasts with the way the Commission treats state and local initiatives in that once the group begins circulating petitions, they can incur reporting obligations, regardless of whether the issue makes it to the ballot.

Ms. Allison suggested that the Commission consider three issues: Whether or not the Commission has the authority to change *Fontana*; if the Commission can and does change *Fontana*, what should and should not be reportable; and lastly, whether reporting should be done under the Political Reform Act (PRA) or by supporting the Hertzberg bill.

LeeAnn Pelham, Deputy Director of the Ethics Commission, complimented staff on their presentation of the issues. She explained that the fundamental issues are whether the public has a right to know about how much is being raised and spent and by whom in the secession process, and whether disclosure requirements should apply. The view of the Ethics Commission is that the public does have a right to know and that disclosure requirements that currently apply to other ballot measure committees should also apply to the secession process.

Ms. Pelham stated that the Ethics Commission agrees with staff that the Commission has the authority to change *Fontana*. She explained that groups who intend to submit something to the voters at the time that they begin circulating the petitions are attempting to influence the voters, and could trigger the regulations related to qualifying a ballot measure. Ms. Pelham explained that if the Commission supports that position, groups reporting to LAFCO should be treated the same as any other ballot measure committee. She added that campaign-like activities should be captured in the campaign reporting requirements, and that if groups make expenditures to influence the decisions of LAFCO, those activities should be handled as lobbying disclosure issues. The Ethics Commission encouraged the Commission to deal with campaign financing and disclosure issues through regulations and to support the language in the Hertzberg bill which would encourage local LAFCOs to establish uniform and very clear lobbying disclosure programs.

Leslie McFadden, Legislative Representative for the City of Los Angeles, explained that the Los Angeles City Council took a position on AB 2838, supporting the bill if it is amended. She added that the City of Los Angeles would like the amendments to include more specific language as it relates to lobbying.

Ms. Pelham stated that the issues faced in Los Angeles with the secession efforts could affect communities statewide, and that the Ethics Commission is not trying to address issues retroactively, but to anticipate future secession issues wherever they may occur in California. She stated that any efforts around the state, where petitions are being circulated to initiate a LAFCO process, should be disclosed.

Commissioner Scott questioned whether the Ethics Commission wanted a provision which would cover the LAFCO process, but would recognize that there are LAFCO issues that are not

statewide, since statewide issues seem to be a concern.

Ms. Pelham responded that efforts like the Los Angeles secession effort may happen anywhere in the state, and they are fundamentally issues that are governed by the PRA so there needs to be a closure of the loophole in the *Fontana* opinion. She added that the Ethics Commission had proposed some language that would give some specificity within the framework of the Cortese-Knox Act to establish some sort of threshold for when people are required to submit disclosure reports at LAFCOs. It may make sense, she continued, to have a higher threshold than the one that was in the proposed language. People may never reach that threshold level in smaller jurisdictions where the lobbying activity level would be much lower than in a larger area like Los Angeles.

Ms. Pelham reminded the Commission that a group becomes a committee under the PRA at \$1,000 regardless of what jurisdiction it is in. The language suggested by the Ethics Commission did not require registration as a lobbyist, but required that if a certain level of activity is met for certain purposes during a six-month period, a one-page report must be submitted to the local LAFCO so that it would be available to the public. Their intent was to devise a system which would not take a lot of administrative overhead but was sensitive to the fact that there are very different issues facing different LAFCOs in different jurisdictions throughout the state.

Chairman Getman suggested a requirement to submit a financial report to LAFCO at the same time a petition is submitted, and the financial report would address how much money went into the petition gathering, who gave the money, and how it was spent. That financial report would then be made available to the public.

Ms. Pelham responded that the ultimate goal would be to extend the existing language in the PRA to LAFCOs, but did not believe that a different framework to cover LAFCOs was necessary, because their activities were similar enough to other efforts to qualify measures for the ballot and should be treated the same way.

Chairman Getman noted that she saw the activities as different, and that the Ethics Commission's proposal could present practical problems. She was also concerned about Supreme Court decisions in the petition area, noting that caution should be exercised in narrowly tailoring a proposal. Chairman Getman questioned the need for filing at the state level, since the issues are often local in nature. She pointed out that the secession issue with Valley Vote was an unusual circumstance and that school district reorganizations should not necessarily be drawn into this requirement. She also noted that the disclosure information needs to be immediately available to the public at the local level.

Ms. Pelham stated that the reports could be filed at the local level as well as the state level.

Chairman Getman expressed her concern that this is similar to the situation involving PERS Board Members, where the Commission discussed trying to have general candidate reporting

requirements fit the elections that are not like the normal state and local elections. She agreed that there should be reporting, particularly in the case of larger issues such as the secession issue, but suggested that trying to make the PRA fit that may be the wrong approach, and that it may be better to address the issue head-on by making a recommendation of a reporting requirement that would be tailored to fit the LAFCO process.

Commissioner Scott did not agree with the analogy to CalPERS because it involved an election of people who then appear in a lobbying situation. She expressed her concern with trying to recapture information at a future date. Commissioner Scott noted that this situation is more analogous to a regular election than to the CalPERS situation. She acknowledged that the Commission must be cognizant of the First Amendment, but pointed out that the Commission is a disclosure agency and that if the Commission does not stand behind disclosure and figure out how it applies in particular situations, then the whole validity of the California disclosure system comes into question. Commissioner Scott stated that she liked the idea of some consistency in terms of reporting, but suggested that if lobbying requirements are imposed, those requirements should not be set so high that the rules are difficult to enforce.

Jeff Brain, President of ValleyVote, commended the staff's report. Mr. Brain agreed that there should be openness in reporting, but that it needed to be balanced with protecting a citizen's rights.

Mr. Brain noted that page three of the report states that LAFCO has the right to approve or deny, and then states that supervisors must hold an election. He objected to the use of the word "must" because even if the petition drive is successful, the wording on the ballot may not be the same as the wording on the petition because LAFCO can change the parameters of the project. He noted that LAFCO actually develops a proposal. Mr. Brain also objected to a chart in the report that indicates that after the petition goes to LAFCO, the petition is placed on the ballot. He stated that the petition does not go to the ballot. In fact, he stated, LAFCO will develop a two hundred page document that formulates the proposal and that document goes to the ballot. Mr. Brain also noted that page six of the report states that LAFCO must approve the secession proposal, and suggested that the word "approve" be changed to "develop."

Mr. Brain discussed the three steps of the LAFCO process, commenting that he has no disagreement with the voting stage, but that the petition stage speaks to a study, and does not encourage a decision. He noted that the difference between the LAFCO process and an initiative process is illustrated in the intervening step, which precludes a certainty that the proposal will go to the ballot and does not establish a time frame. He noted that qualification of the petition does not assure a vote, and that the structure of the ballot measure is controlled by LAFCO, not the group presenting the petition. He added that LAFCO can change the proposed boundaries, and often does.

Mr. Brain stated that ValleyVote does gather information on the funding they receive and keeps records of that funding, and noted that ValleyVote would be the only entity which would be

required to disclose regarding the San Fernando Valley issue.

Chairman Getman questioned whether a person working in opposition to a petition who spends more than \$1,000 could become a ballot measure committee and disclose.

Technical Assistance Division Chief Carla Wardlow responded that disclosure could be required either locally or at the state level, depending on how it is defined.

Mr. Brain summarized that there is no disagreement with the vote stage, but that ValleyVote did not agree that disclosure should be required at the petition drive stage. He agreed that the LAFCO study stage could be considered a lobbying stage, but asked that the Commission consider whether certain steps ValleyVote has to take in response to questions from LAFCO should not be considered lobbying. He asked that whatever the Commission applies to ValleyVote should be applied to everyone, including the City of Los Angeles. Mr. Brain stated that ValleyVote will abide by whatever the Commission decides.

Commissioner Scott asked Mr. Brain why ValleyVote was against disclosure.

Mr. Brain responded that there have been acts of retribution, threats, and requirements to pay unnecessary fees.

Commissioner Scott noted that the Commission had asked for evidence to support the accusations Mr. Brain was making but had not as yet seen any evidence.

Mr. Brain stated that he did not realize that he was asked to provide evidence to the Commission. He had submitted to staff documents from a lawsuit filed by the ACLU, and he submitted an issue regarding the verifying of signatures. He noted that there were two public officials who have been asked to resign from their positions by a council member.

Commissioner Scott stated that one of the public officials, Burt Bachman, has publicly stated his position on the secession issue.

Mr. Brain responded that Mr. Bachman is a highly visible person, and that other people who are not as visible as Mr. Bachman have to be concerned about retaliation by city officials.

Commissioner Scott questioned whether the issue of retaliation would be better addressed in another way, rather than not requiring disclosure.

Commissioner Scott asked Mr. Brain whether or not he agreed with staff's analysis of what would be disclosable.

Mr. Brain stated that he agreed with staff's analysis.

Dan Reibson, with the California Department of Education, urged the Commission to be careful

if disclosure is to be required. He noted that there are no disclosure issues with school reorganizations, and questioned why disclosure needs to be required if there are no problems with the system. Mr. Reibson added that school district reorganizations usually involve volunteer workers, not well-funded organizations. He stated that he did not know the specific issues involved in possible school district reorganization in the San Fernando Valley.

Commissioner Deaver noted that the Department of Education did not need to be involved.

Peter Detweiler, from the Senate Local Government Committee, answered questions regarding LAFCO from the Commission. He noted that LAFCOs do change proposals that come to them. It is important, he stated, to remember that when a petition comes to LAFCO, the law requires the petitioners to make a proposal, and to provide a substantial amount of information, including boundaries. The petition asks LAFCO to approve that proposal. The statute, he continued, gives LAFCO the authority to approve, disapprove, or approve with conditions. The proposal must have LAFCO's approval to go to the Board of Supervisors. If LAFCO were to put conditions on ValleyVote's petition which ValleyVote was against, ValleyVote could not withdraw the petition once LAFCO has approved it, and the only legal recourse for ValleyVote would be to go to court to try to overturn the LAFCO decision. Mr. Detweiler noted that the courts generally uphold LAFCO decisions.

Commissioner Scott asked whether LAFCOs have adopted lobbying rules.

Ms. Allison stated that the Los Angeles LAFCO was asked if they would adopt lobbying rules, and their position was that they did not have the authority to do so. She noted that the Hertzberg bill would give them the authority to adopt lobbying rules. Whether or not it will be required will be determined by whatever is eventually adopted.

Chairman Getman asked Mr. Detweiler whether the ValleyVote issue is typical of LAFCO issues.

Mr. Detweiler responded that the process is not fundamentally different, but it is different in scope and magnitude and has spillover effects with respect to HarborVote and perhaps Hollywood. The procedures are not essentially different from what LAFCOs do under the Cortese-Knox Act. He explained that proposals begin with LAFCO by petitions or by resolutions adopted by city councils, special district boards, and sometimes county boards of supervisors. He speculated that most LAFCO activities in metropolitan counties are initiated by application from a local government. Boundary changes by petition are relatively small in number, and most boundary changes that LAFCO deals with are relatively small.

Ben Williams, Executive Director for the Commission of Local Governments, stated that Cal LAFCO is not taking a position on the proposed lobbying requirements of the Hertzberg bill. He stated that LAFCO will become a much more substantial player in development in parts of California and as such believes that it will become more important for activities related to

campaigns and lobbying to be disclosed. However, he noted that the reporting requirement should not be over onerous, particularly for small LAFCOs, and that it not be implemented in such a manner as to discourage participation. The recommendation of the Commission of Local Governments is that all LAFCOs shall adopt some written guidelines which shall include lobbying guidelines.

Commissioner Deaver pointed out that this is an issue which will happen more often in California, and that a petition drive is the beginning of a political battle. He suggested that the Commission consider this step as an initiative and that it should be treated the same as an initiative in terms of thresholds. Commissioner Deaver also suggested that lobbying and campaign reporting be handled separately. He added that the lobbying issue should be handled legislatively, setting up a model or statute, that the local LAFCOs could and should adopt. Commissioner Deaver noted that the Commission is mandated through the PRA to regulate disclosure, and that this process does amount to a political act which should be regulated.

Commissioner Swanson stated that the initiative process is very different from the LAFCO process, in that it makes something happen. She was concerned that disclosure could circumvent local rule and would create one blanket rule for small and large LAFCOs, and open a floodgate door for other districts, including school districts, small and large, urban and rural. She questioned the wisdom of jumping into this issue at this time, and suggested that local LAFCOs can supply sufficient guidelines to fit the need of the specific. Commissioner Swanson was concerned about making a judgment now for the case of the Ethics Commission and ValleyVote as a blueprint for everything else, when everything else is so different. She stated that local rule is the best.

Ms. Allison clarified for Commissioner Swanson that staff's position is that the Commission can reverse *Fontana*, given that the statutes are different today than they were when *Fontana* was decided. She stated that contributions and expenditures related to qualifying a measure include activities during the petition stage and potentially during the study stage.

Commissioner Deaver noted that he believed in local control, and that one of the problems with the way that the rule is applied in California is that it is applied in fifty-eight different ways. He added that the Commission already has jurisdiction over local government. He reminded the Commission that this is all about disclosure and everyone in state or local government has to fill out a form 700, so the precedent is there. He did not want the Commission telling everyone all over the state how to do things, but pointed out that there had to be some sort of guidelines, especially when it comes to disclosure, and especially when it involves a political act. He believed that the philosophy of the statute needed to be applied, especially since he predicted that this type of situation would come up more and more often.

Commissioner Scott voiced her concern that there are no local rules required by LAFCO to require disclosure. She pointed out that the local Ethics Commission must come to the FPPC to develop rules because they do not have authority to make them. Commissioner Scott questioned whether anyone had the authority to make local rules. She agreed with Commissioner Deaver

that the Commission must focus on what is disclosable, and whether the Commission fundamentally supports the disclosure issue.

Chairman Getman stated that she agrees that there needs to be some disclosure, but that the Commission should direct staff to work with the Golding Commission and the Speaker's office on the Hertzberg bill. She noted that the Commission does not have the authority under the PRA to regulate everything related to the political process. Chairman Getman noted her full support of a requirement to have a disclosure requirement for contributions or expenditures related to gathering signatures for a petition, but noted the fact that the petition is not closely tied to the election and that the rules are for elections and ballot measures, not the LAFCO process, which may not go to a vote for years after the petition has been signed and may be very different from what the petitioners originally signed. She suggested that the Commission work on a disclosure rule that is specifically tied to LAFCO and would not affect school districts. She stated that while she favors disclosure, she was not in favor of reversing *Fontana*.

Commissioner Deaver stated he believed that disclosure should occur as soon as the threshold is reached.

Chairman Getman agreed, but noted that it should be an explicit statutory position, and that *Fontana* should not be overturned, but the issue resolved legislatively. She suggested that staff work with the Speaker's office and the Golding Commission and strongly support a requirement to have disclosure requirements for LAFCO petitions at the stage where they are submitted.

Commissioner Scott noted that the *Fontana* opinion no longer reflects the law, and expressed her concern that the Commission may not change that opinion because of a fear that it may open future floodgates.

Chairman Getman did not agree that the law has changed. She stated that the current language refers to the qualification of the measure, and that she did not see a change in the law that affects this issue of LAFCO disclosure..

Ms. Allison clarified that the qualification language in the statute did not exist when *Fontana* was issued, and that fact would allow the Commission to now require reporting at qualification where it could not previously be done under *Fontana* because the reporting statute that existed at the time only required reporting from committees supporting a measure, not committees supporting qualification of a measure.

Commissioner Makel noted her concern about whether the Commission had the authority to overturn *Fontana*. She stated that it was a very complex issue and that both sides had good arguments. The more important issue, she added, is whether the Commission should overturn *Fontana*. Commissioner Makel observed that it is very significant that the legislature is studying this issue, and that it is very important to remember that the Commission is a regulatory agency that does not make law, but implements the law that the elected representatives have made. She noted that while the Commission may technically have the authority to overturn *Fontana*, she believed that the Commission should wait to see what the legislature decides to do.

Commissioner Deaver agreed that the Commission does not make law, but noted that if the Commission favors disclosure during the petition process, then the Commission is, in effect, overturning *Fontana*.

Chairman Getman responded that it depends on how the Commission chooses to implement favoring disclosure. Her view was that *Fontana* did not need to be changed, but that the Commission should work with the legislature to make a statutory provision to require disclosure in the LAFCO context. She noted that while *Fontana* requires disclosure at the qualification stage, it is not sufficient because it does not explain what it means to qualify a measure. Chairman Getman explained that to qualify a measure in the LAFCO process, the agency must formulate whatever proposal it decides to present to the voters, but qualifying an initiative only requires the petition and then the initiative goes directly to the voters.

Commissioner Scott stated that the Commission may be taking a fundamental step backward if they do not support disclosure on this issue. She noted that the Commission should be looking at how to achieve disclosure. She did not believe that the Commission would be taking the role of the legislature if they require disclosure. Commissioner Scott suggested that if the Commission could not require disclosure, then they should consider going to LAFCO and to the legislature and advising them that the Commission is having a problem fulfilling their fundamental task of enforcing disclosure.

Commissioner Makel observed that all five of the Commissioners agreed that disclosure is necessary, but that the issue was whether to use the mechanism of overturning *Fontana* to accomplish disclosure requirements. She explained that there will be other problems created by overturning *Fontana*, such as requiring disclosure for school district reorganizations.

Commissioner Scott questioned whether there really was a “floodgate” issue.

Commissioner Deaver motioned that the FPPC, believing strongly that disclosure should be increased in LAFCO petition drives, directs the staff to work with the Local Government Commission and with Assemblyman Hertzberg’s staff to implement this type of disclosure, and, at the same time, work with the staff to develop lobbying regulations that could be imposed at the local level.

Chairman Getman seconded the motion.

Commissioner Scott stated that she would vote against the motion, and noted that she believed that the Commission should seriously consider a lot of things that the Commission is looking at on the disclosure issue. She added that she believed that if the Commission wanted to be consistent, the Commission was taking a fundamental step backwards with what is influencing voters, what is part of the political process, and she believed that it was not consistent with the Commission’s position and role as Commissioners.

Commissioners Makel, Swanson, and Deaver, and Chairman Getman voted “aye”. Commissioner Scott voted “nay”. The motion passed 4-1.

Chairman Getman adjourned the meeting for a break at 10:35 a.m. The Commission meeting reconvened at 11:00 a.m.

Item #6. Legislative Report.

Counsel and Government Relations Director Mark Krausse presented the Legislative report, requesting action on the following items:

2. AB 2838 (Hertzberg): LAFCO Reform Proposal with Lobbyist and Campaign Reporting Components.

Mr. Krausse explained that one of the issues raised in the staff analysis is whether AB 2838 is an amendment to the PRA. One approach is taken in the lobbying language of the bill, mandating that the local LAFCO's adopt their own reporting requirements.

Assistant General Counsel Luisa Menchaca noted that the FPPC has no authority to regulate lobbying at the local level.

Mr. Krausse pointed out that the way the lobbying reporting proposal is worded, it would not require that the Commission regulate at the local level, but puts it in the Cortese-Knox Act and requires that it be consistent with the PRA. He added that it is adopted under the policy and procedures requirements of Government Code §56300. Mr. Krausse added that there may be authority to do that under existing law. He stated that the Ethics Commission has their own lobbying language that looks more like specific requirements, not allowing each LAFCO to adopt its own local rules that fit the jurisdiction. He did not know whether the Commission should have a separate proposal or position. He suggested using the L.A. Ethics Commission's language as a model that each LAFCO could tailor to fit its needs.

Commissioner Swanson asked whether the lobbying would be covered by the lobbying requirements of the current PRA.

Mr. Krausse responded that there are lobbying requirements only at the state level, and that there are currently no rules covering LAFCO procedures.

Chairman Getman explained that each local jurisdiction imposes their own lobbying requirements. She noted that the question was whether the Commission should take a position on requiring LAFCOs to adopt some sort of lobbying regulation that fits into their specific circumstances, or should the Commission take a position that there should be one kind of model lobbying act that must be incorporated into each LAFCO's procedures.

Mr. Krausse stated that he believed that it was very clear that it should not be in the PRA.

Mr. Krausse clarified that the Ethics Commission did not request the FPPC to adopt LAFCO-specific lobbying requirements, but that they were going to the Legislature for that. He added

that LAFCOs are a special agency that was created by the Legislature and is likened to a local agency because it is guided by local provisions. Mr. Krausse explained that certain LAFCO's are dependent on their county for funding while others are not, creating a "dependent" or "independent" distinction.

Commissioner Deaver suggested that the Commission contact Assemblyman Hertzberg's office to develop a structure that would require some sort of lobbying reporting for LAFCO's, similar to what is required elsewhere.

Mr. Krausse asked the Commission whether, using any model, the Commission wanted to set in state law lobbying triggers which would allow each jurisdiction to adopt their own rules.

Commissioner Scott expressed her concern that if the Commission asks the Legislature to require each jurisdiction to adopt their own rules using a model, the end result would be that the LAFCOs do not end up with adequate disclosure rules.

Mr. Krausse suggested that one approach would be to have a reporting threshold that represented a floor rather than a ceiling.

Ms. Menchaca noted that the way the present language is drafted the FPPC would not have jurisdiction over the reporting, but that the LAFCOs would simply utilize similar rules.

Commissioner Scott noted that then there would be no entity with jurisdiction over LAFCO if they do not adopt rules.

Chairman Getman clarified that each LAFCO would be required to adopt a lobbying portion.

Commissioner Scott observed that the lobbying would be set with a ceiling that is so high that there would be no disclosure.

Mr. Krausse stated that he would be able to report at the Commission's May meeting the current status of the bill so that the Commission could look at it again to determine whether it was strong enough.

Chairman Getman stated that the issue on the campaign side was whether to have campaign reporting under the PRA or have campaign reporting treated like lobbying.

Mr. Krausse explained that, under *Fontana*, reporting does not occur on a measure until it is submitted to the voters. At that point, he explained, all expenses for a political purpose incurred in the course of placing the petition on the ballot are reportable.

Commissioner Scott noted that there is no obligation to keep a record of those expenses, and questioned how recapture could be enforced if there was no requirement to keep those records.

Commissioner Deaver suggested that the Commission request that the Legislature require

disclosure.

Chairman Getman noted that the Commission could solve the problem by trying to address the issue of recapture, but that decision should not interfere with what the Commission ultimately decides to do about campaign reporting.

Commissioner Scott suggested that there be a rule requiring that records be kept.

Commissioner Deaver observed that the information should be captured and disclosed when signatures are collected, and did not see any sense to trying to recapture.

Chairman Getman noted that recapturing should be studied to determine whether the Commission should address it. The Commission did need to decide whether the reporting should be under the PRA or the Knox-Cortese Act.

Commissioner Deaver suggested that the Commission needed to decide whether the Commission was in favor of collecting the information, and that if the Commission is in favor of collecting the information, then it should be reported as it's collected under the PRA.

Chairman Getman expressed her concern that while the Commission may ultimately prefer that it be in the PRA, it might be better to see if the Legislature is going to require reporting under the Cortese-Knox Act. This could be done with a simple majority vote. She noted that it may not be the ideal method, but at least it accomplishes the earlier reporting.

Ms. Menchaca advised that regardless of whether the Commission decided that it should be part of the PRA, the recapturing issue may not be avoidable. The Commission may need to set up a trigger point which will determine at what point reports must be filed.

Commissioner Deaver encouraged Mr. Krausse to advise legislative staff of the Commission's concerns.

Mr. Krausse asked the Commission what its position is on the dual reporting which would result if the Cortese-Knox Act is amended instead of the PRA.

Chairman Getman responded that she would rather see dual reporting than no reporting.

Commissioner Deaver did not support dual reporting.

Commissioner Deaver advised Mr. Krausse that the Commission was in favor of disclosure but could not agree on how best to accomplish disclosure.

Ms. Menchaca noted that, with respect to the lobbying and campaign reporting provisions of the bill, the Commission is treating the middle stage of the LAFCO process as being separate from the campaign portion.

1. AB 1838 (Leonard): Extends Industry, Trade or Profession Exception In Conflict Statutes to All Public Officials.

Mr. Krausse presented the most recent copy of AB 1838 to the Commission. He explained that it is sponsored by the California Association of Realtors and addresses their concerns that conflict regulations and statutes disproportionately disqualify real estate licensees from taking part in governmental decisions.

Stan Wieg, with the California Association of Realtors, commended staff work on this issue. He stated that there is an overly broad leap that anything having to do with property is somehow more of a potential conflict for a realtor than for other professionals in an area. Their concern, he continued, is that decisions, particularly in business climate issues, may affect other people similarly situated as business people, and the California Association of Realtors believes that it is inappropriate to deny them the legal right to vote on those issues, simply because they have a license that relates to property. AB 1838 is not designed, he added, to run roughshod over the PRA, but is a backstop to make sure that they can do what they need to do. He described this change as “tweaking” the law in a way which will still prohibit participation where a real conflict exists, but that speculative conflicts will not disqualify someone from doing the job that they were elected or appointed to do.

Mr. Wieg stated that advice letters from the Commission have required disqualification of real estate licensees. In the cases of annexing or developing a piece of property, he noted, real estate licensees should not be considered as having a conflict. He added that if there is no connection or direct impact on the realtor, the law does not require that prohibition. Mr. Wieg stated that the way the regulations are currently structured, the “public generally” exception does not apply to them in cases where he believed it should.

Mr. Wieg described a scenario where a city wanted to impose an urban growth boundary on development, and stated that if a real estate licensee were on that city council or planning Commission, a conflict for the realtor would exist and the realtor would not be allowed to vote. Someone who works for another business in the same city would be allowed to vote, and the California Association of Realtors does not believe that is fair.

Commissioner Scott questioned why the “public generally” exception did not apply.

Mr. Wieg referred to the *Teasley* advice letter, in which staff advised that, because there is such a big development conflict, involving many housing units which will eventually come on the market, it could not help but effect the real estate licensee and that the licensee could not vote on the issue. He stated that in the second letter, Ms. Teasley disclaimed any attempt to list any of the properties or developers she had any connection with, but that because she was a manager of a Coldwell Banker office in the area, even though she was not selling the units, she was told that she had a conflict and she was investigated and almost prosecuted.

Ms. Menchaca stated that Mr. Wieg's analysis that real estate brokers who have multiple economic interests than can cause disqualification is correct. In a conflicts analysis involving a development project, there is a greater potential for conflict because of the greater economic interest. In the *Teasley* matter, she continued, it was the magnitude of the effect that triggered the conflict. The "public generally" regulation requires that fifty percent of the businesses in the jurisdiction must be affected in order to apply that exception, and often it does not. Staff will be bringing the "public generally" to the Commission for review in the coming month with respect to the policy issues, Ms. Menchaca added.

Chairman Getman noted that the Commission's working group and interested parties' meetings have studied the "standard of care" issue, and that there are problems and proposals that the groups are looking into, including placing time limits on financial interests for purposes of determining a conflict. She stated that she is currently opposed to this proposal, but that staff would continue working with Mr. Wieg with respect to the "public generally" issue, and expressed her hope that by the time that process is finished, it will not be an issue any longer.

Mr. Wieg noted that he has been directed by his Association to work to correct this situation through regulations and to continue to pursue the bill as a backstop. He added that he is constrained by legislative deadlines and that the bill will have to move out of its first house sometime in the next two months. He added that they had submitted a draft addressing the "standard of care" issue, and do not intend to put that in a bill.

Chairman Getman motioned that the Commission oppose the bill as currently written, but to continue working with Mr. Wieg and other groups on the process.

Commissioner Makel stated that she did not want to support the bill, but wished to take a neutral stand on the issue. She stated that she would probably disagree with what the realtors are trying to do but she recognizes that there are two legitimate sides to the issue and that she feels uneasy at this time taking a position.

The Commission agreed to remain neutral on the bill for now.

3. AB 1874 (Johnson) Online Campaign Disclosure.

Mr. Krausse provided some draft technical amendments provided by Technical Assistance Division as proposed clarification to the bill which was passed the Senate Elections Committee on April 5, 2000, and noted that there was no online reporting requirement in January. He explained to the Commission that the proposed amendment would strike out lines 27 and 28 on page 3 of the bill because it unnecessarily limits the bill's application in a way the author did not intend. The language at the bottom of that page, noting that this language recommended by Technical Assistance Division would avoid confusion by future auditors looking for compliance with this provision.

Chairman Getman noted that she was not sure that she could support this bill without further discussion. She questioned whether staff should be working with the author's staff on the bill if the Commission was not yet taking a position on the bill.

Commissioner Makel commented that this case seemed pretty simple and that it might be appropriate to offer amendments.

Chairman Getman asked whether there was a way to offer amendments without taking a position of support.

Mr. Krausse explained that concerns were generally shared with the author's staff. He explained that the bill involved whether a person who did not have an election this year, and did not make contributions, would have to file a report. Currently, they would not have to file. This bill will change that rule by requiring online reporting once the bill is enacted. He reported that, under the bill, persons who did not file online in January would still have to file online in July. If this bill does not pass, they would not have to file online reports until January of next year.

Chairman Getman noted that electronic filing was designed as a phased-in program, and did not require everyone to file electronically right away. She explained that it is phased in by the level of contributions and by who has to file. This delay was implemented because it was a new program, and the designers wanted to work out any problems before everyone was filing electronically. She noted that late contribution reports still had to be keyed in by hand and that there are still vendors who have not yet been certified. Chairman Getman stated that this bill would be trying to push people to file earlier without addressing the fact that electronic filing is not yet working correctly yet.

Commissioner Scott questioned the need for the delay, noting that if technical problems exist, disclosure should still be required. She pointed out that the people should not be penalized for problems that are not their fault, and that the law should not be postponed.

Chairman Getman responded that problems do exist, and that it would create more problems if everyone filed. She added that the Secretary of State's office was working around the clock to fix those problems.

Commissioner Deaver stated that the Commission was in favor of online reporting, but that the new system should be allowed to take its course.

Chairman Getman noted that this time next year the problems should be worked out, but that it does not make sense to place an additional burden on the online system now.

Commissioner Scott stated that she did not believe that the technical problems should preclude the Commission from requiring disclosure, and suggested that if disclosure is required, the technical problems might be resolved more quickly.

Commissioner Deaver stated that the Commission should take a neutral position on this bill.

Commissioner Makel pointed out that the Commission does not have to take a position.

Commissioner Scott stated that the Commission should not take a public position that people

should not be online. She suggested that the Commission start an initiative to work on the technical issues. Commissioner Scott stated that the Commission needed more information about what the technical problems are with online reporting, and should explore whether the Commission could have a role in making it work. Commissioner Scott stated that she would also like some publicity on this issue too.

Chairman Getman responded that Commission staff meets with the Secretary of State's office every week.

Technical Assistance Division Chief Carla Wardlow explained her role in working with the Secretary of State's office, noting that she attends many meetings with vendors, is involved with their Users Group, and she is a member of the Executive Steering Committee. She added that the Secretary of State's office has been so busy that there have not been very many meetings recently. She explained that there are a lot of things that are not going right and explained some of the technical problems.

Commissioner Scott asked whether there was anything the Commission could do to help resolve these technical difficulties.

Ms. Wardlow responded that she gives them as much assistance as she can and is in regular contact with Caren Daniels-Meade at the Secretary of State's Office and works with her to resolve issues as soon as they come up. She explained that the Secretary of State's office has a contractor working on the technology issues and that there is nothing more that she can do to help speed up the process.

The Commission did not take a position on the bill.

SB 2076

Staff Counsel Scott Tocher reported that a Senate hearing on the Forms Simplification Project, a Commission-sponsored piece of legislation, was postponed in order to allow Commission staff to meet with staff from the committee to discuss concerns that the consultant had with the bill before it goes to public hearing. During that meeting, concern was voiced that quarterly filing might result in an increased number of filings and because those filings might have to be made electronically, there might be a hesitancy to further burden the troubled online filing program. Additional concerns were expressed that since there have been so many recent changes in the PRA, it might be better accepted by the regulated community if further changes be delayed in order to let the recent changes work more smoothly. Staff will be meeting with Senator Polanco's staff and with the Committee's staff to evaluate whether or not these concerns can be addressed. Mr. Tocher added that staff will be responding to some concerns related to the content in a manner which he believed will allay those concerns. He explained that the Commission's legislation may face a situation in the future where, in order to advance it, certain parts may need to be set aside, and that quarterly filing could possibly be an aspect that the Commission will be asked to set aside. He noted that, because of time constraints, it may not be

possible to come to the full commission, and he may need to meet with the commission's special advisory committee to seek approval for particular amendments to the legislation.

Mr. Tocher reported that they hoped to set it for a hearing. He added that Senator Polanco has indicated that he has no problem with moving along parts of the bill that have little opposition and that he finds it substantively worthy.

AB 974

Mr. Krausse reported that this was Assemblyman Papan's bill and that it was withdrawn from the Governor's desk. He stated that he met with the author's office and that they are trying to get it back to the Governor's office. He noted that the bill has not yet been amended to remove the most objectionable provisions.

SB 1823

Mr. Krausse stated that this very technical clean-up bill passed out of the Senate Elections Committee.

AB 2728

Mr. Krausse reported that this bill has been set for hearing April 10, 2000 with the Elections Committee.

Mr. Krausse reported that the McPherson Commission has scheduled an April 27 meeting to address enforcement issues, and that on May 8 there will be a meeting to address conflicts issues. He added that the report on enforcement by Bruce Cain could be characterized as favorable overall. The McPherson Commission anticipates that it will have a final report for the legislature by June 30, 2000.

Mr. Krausse explained that there was mentioned the notion of eliminating the conflict of interest provisions, and simply disclosing economic interests instead, but he did not think that it will be a recommendation of the McPherson Committee.

Mr. Krausse reported that the Public Employees Retirement System has convened an informal group to explore Government Code section 1090 to resolve some issues. They have identified several proposals which includes moving the substance of the Section into the PRA. Mr. Krausse said he would present draft proposals to the Commission as they become available.

Item #2. Public Input

Lance Olson, from the law firm of Olson, Hagel Leidigh Waters & Fishburn, explained that the Michael Johnson advice letter issued by the staff on March 16, 2000, regarding Voter Revolt, addressed an issue concerning the names of political committees, specifically the requirement in the PRA that organizations who sponsor committees identify the name of the sponsor.

It was Mr. Olson's view that the vast majority of political committees not controlled by candidates are sponsored by organizations. He added that almost all of the committees that organize opposition to ballot measures are sponsors, and many of them are multiple sponsors.

Mr. Olson pointed out that there is a statute that instructs people on what requirements pertain to multiple sponsors, and there is a long-standing regulation as well as a body of interpretive law resulting from advice letters explaining the regulation. The advice letter includes a footnote which Mr. Olson described as "completely gratuitous" to the conclusion that was reached, which calls into question this body of law.

The letter, he explained, cites correctly the *Olson* letter, and in the footnote states, "In retrospect, the advice in the *Olson* letter seems problematic. Arguably, the advice is contrary to the plain meaning of the statute." It concludes, ". . . Whether correct or incorrect, it is not on point with your facts and we do not explore this issue further."

This footnote, Mr. Olson explained, casts in doubt the *Olson* letter and all other letters dealing with the issue of sponsors. He stated that if staff believe that the *Olson* letter advice was wrong, it should be brought to the Commission as a regulation or opinion, and not addressed in a footnote.

Chairman Getman adjourned the meeting for lunch and closed session at 12:10 p.m. The Commission meeting reconvened at 1:30 p.m. Commissioner Scott was not present.

Items #8, #9, #10, #11, #12, #13, #14, #15, #16, #17, #18, #19, #20, #21, #22, #23, #24, #25, #26, #27, #28, #29, #30, #31, #32, #33, #34, #35, #36.

There being no objection, the following items were approved on consent:

Failure to Timely File a Major Donor Campaign Statement (Government Code Section 84200(b) - Expedited Procedure.

- 8. In the Matter of AC Nielsen, FPPC No. 99/380.**
- 9. In the Matter of Authentic Fitness, FPPC No. 99/318.**
- 10. In the Matter of Century Pacific Equity, FPPC No. 99/322.**
- 11. In the Matter of Jonathan Grey & Associates, FPPC No. 99/369.**
- 12. In the Matter of Roger Kirwan, FPPC No. 99/372.**
- 13. In the Matter of Loeb & Loeb, FPPC No. 99/381.**

14. In the Matter of Mann's Sunny Shores, FPPC No. 99/402.
15. In the Matter of MGC Communications, FPPC No. 99/398.
16. In the Matter of Kathleen L. McCarthy, FPPC No. 99/404.
17. In the Matter of McLarand, Vasquez & Partners, FPPC No. 99/405.
18. In the Matter of Charles Robins, FPPC No. 99/383.
19. In the Matter of Santa Clarita Business Park Co., FPPC No. 99/393.
20. In the Matter of Stuart Schwartz, FPPC No. 99/392.

21. In the Matter of Donald E. Sodaro, FPPC No. 99/401.
22. In the Matter of Sun Healthcare Group, FPPC No. 99/376.
23. In the Matter of Umax Technologies, FPPC No. 99/394.
24. In the Matter of D. H. Smith, Inc., FPPC No. 99/324.
25. In the Matter of Litton Industries, Inc., FPPC No. 99/379.
26. In the Matter of National Steel & Shipbuilding Co., FPPC No. 99/407.

Failure to Timely File a Major Donor Campaign Statement (Government Code Section 84200(b)) and a Late Contribution Report (Government Code Section 84203) - Expedited Procedure:

- 13. In the Matter of California Insurance Group, FPPC No. 99/506.**
18. In the Matter of Vahan Chamlian, FPPC No. 99/505.
19. In the Matter of Griffith Company, FPPC No. 99/416.
20. In the Matter of Kenneth G. Langone, FPPC No. 99/417.
21. In the Matter of Peter W. Mullin, FPPC No. 99/419.
22. In the Matter of George E. McCown, FPPC No. 99/420.
23. In the Matter of National Alliance Insurance Company, FPPC No. 99/504.
24. In the Matter of James C. Neuhauser, FPPC No. 99/412.
25. In the Matter of Marc Stern, FPPC No. 99/377.
26. In the Matter of Ocean Mist Farms, FPPC No. 99/410.

Items #37, #38, #39, #40, #41.

There being no objection, the following items were approved on consent:

Failure to Timely File Statements of Economic Interests - Expedited Procedure

27. In the Matter of Shirley Mobley, FPPC No. 99/622.
27. In the Matter of Tim Cromartie, FPPC No. 99/756.
14. In the Matter of G. Patrick Dyer, FPPC No. 99/616.
- 28. In the Matter of Olivia Raynor, FPPC No. 99/809.**
29. In the Matter of John Sullivan, FPPC No. 99/619.

Item #43. Failure to Timely File Late Contribution Reports

There being no objection, the following item was approved on consent:

43. In the Matter of Senate Republican Majority Fund, an Officeholder Committee of Senator Rob Hurtt, Rob Hurtt, and Seyol Choye, Treasurer, FPPC No. 98/1.

Item #44. Failure to Timely File Campaign Statements.

There being no objection, the following item was approved on consent:

28. In the Matter of California Independent Public Employees Legislative Council Political Action Committee, FPPC No. 99/817.

Item #42. Failure to Timely File Statement of Economic Interests

There being no objection, the following item was approved on consent:

42. In the Matter of Raymond Cordova, FPPC No. 99/293 (Default Decision and Order).

Item #4. Executive Director's Report.

Bob Tribe gave his last report as Executive Director.

Mr. Tribe requested authority from the Commission to purchase whatever the Commission can afford of the three items outlined in his report.. He added that the Commission will need approval from the Department of Information Technology in order to proceed.

Mr. Tribe explained that the Commission's web site and fax-on-demand programs are of great benefit to the public, and that redesign of the web site will improve that program.

Chairman Getman explained that the redesign of the web site will assist IT staff and will allow web based training. It will also allow for a video feed at Commission hearings.

Commissioner Deaver noted that video feed is available in his local community and that it works very well. He added that he would like to have the agenda put on a CD Rom and the web site in order to reduce the amount of paper mailed each month. Mr. Deaver encouraged staff to put opinions, advice letters, and the PRA on CD Rom and on the web site.

Mr. Tribe responded that staff is also considering putting SEI's on CD Rom. Chairman Getman noted that the PRA should be put on CD Rom first.

Mr. Tribe then explained that he included a request for replacement of personal computers for the entire staff because the current PC's were all four years old, and off warranty. He noted that they take valuable IT staff time to repair. He stated that the possibility of leasing PC's instead of purchasing them was being explored, and noted that if they are leased, the leasing company would be responsible for any necessary repairs. Cost to purchase the computers would be \$110,000, and cost for a three year lease of the computers would be \$120,000.

He noted that he believed the purchase of a new primary copy machine was necessary because of the age and the number of problems of our current primary copy machine, noting that seven years seems to be the life of a copy machine, and the primary copy machine is now seven years old. Mr. Tribe added that the current copy machine cost \$87,000 seven years ago, and a better machine should cost under \$70,000 today. He noted that staff is exploring the possibility of

leasing a new copy machine instead of purchasing one.

Mr. Tribe stated that there are no priorities for the three expenditure requests, and noted that the purchase of the copy machine does not require as many approvals from the Department of General Services.

Commissioner Makel stated that if there were no priorities, staff should proceed.

Chairman Getman asked if there was any objection to the purchases. There being no objection, the expenditures were approved.

Item #7. Pre-notice Discussion of Proposed Amendments to Regulations. Amend Regulation 18438.2 - Proceedings Under Government Code Section 84308. Amend Regulation 18438.3 - Agents Under Government Code Section 84308. Amend Regulation 18438.4 -Participants Under Government Code Section 84308.

Staff Counsel Steve Russo presented three issues, six regulatory options, and staff recommendations for this Phase 2 project.

After briefly explaining the provisions of Section 84308, Mr. Russo described the three issues that the Commission would be asked to make decisions about.

The first issue was whether the Commission should amend Regulation 18438.2 to define by regulation the exceptions set forth in Section 84308, subdivision (a)(5) for “competitively bid, labor, and personal employment contracts.” On this issue, Mr. Russo offered two options for defining the exceptions.

The third issue asked whether the Commission should clarify the scope of the terms “party” and “participant and, if so, offered two options for the Commission’s consideration.

Tony Miller discussed the need to have this information in the Regulation and agreed that it would be an appropriate action.

Commissioner Scott returned to the meeting at 2:00 p.m.

The Commissioners tentatively agreed that the exceptions should be defined in a regulation.

Mr. Russo stated that Option 1 in the staff memorandum defines the exceptions for “competitively bid, labor, and personal employment contracts” in the same manner as they are currently defined in advice letters. He added that if the Commission wishes to adopt the definition for “competitively bid contract” contained in Option 1, it must then decide whether to adopt Option 2, which defines the term “qualified bidder” that is used in that definition. He noted that the Commission could adopt the definition contained in Option 2 or leave the term “qualified bidder” to its everyday meaning.

The Commissioners tentatively agreed that Option 1 should be approved, but Option 2 is unnecessary.

Mr. Russo reported that the second issue was being raised in response to comments made by members of the regulated community at an interested persons meeting, and had not originally been included within the scope of this project. He explained that members of the regulated community had expressed concern that Regulation 18438.3 did not adequately delineate who would be considered an “agent” for the purposes of Section 84308. Options 3 and 4 were therefore being presented to the Commission as options for providing greater clarity regarding who would be considered an “agent.” Option 3 would specify a time limit for when a person would be considered an “agent.” Option 4 would specify which employees of a firm, that is acting as an agent for a party or participant, would themselves be considered agents because of their employment relationship with the firm. Mr. Russo noted that staff was not recommending either of these options, but was merely presenting the options for the Commission’s consideration.

Chairman Getman questioned the issue of agency as it relates to firms having employees in multiple offices, noting that a person who works for a firm must constantly be aware of all of the projects the firm is involved in. She also questioned why architecture, engineering, and consulting firms were being singled out.

Mr. Russo responded that architecture, engineering, and consulting firms were being singled out because they are like entities, and are frequently involved in Section 84308 proceedings.

Chairman Getman asked for a definition for the term “acting as an employee.”

Mr. Russo stated the he was unsure, but thought the term was being used to distinguish actions that are being taken as an employee, from actions that are being taken in a private capacity.

Ben Davidian, with the law offices of Bell, McAndrews, Hiltack, and Davidian, stated that the discussion may be confusing conflicts of interest with campaign contributions. He added that Option 3 only works if Option 4 is adopted too. He supported Option 4, but noted that it needs to include individuals. Mr. Davidian noted that the First Amendment will protect some individuals from these proposed definitions.

Kathy Donovan, from the law offices of Pilsbury, Madison, & Sutro, explained that the proposal carried with it administrative problems as well as First Amendment rights issues.

Commissioner Scott agreed, but noted that a firm must circulate information regarding who the firm’s clients are.

Commissioner Scott noted that she was sympathetic with the First Amendment issues, but noted that a firm’s fortunes are tied to its client’s fortunes.

Ms. Donovan stated that regardless of the fortunes involved, First Amendment rights cannot be sacrificed.

Ms. Menchaca noted that it was not necessary for the Commission to adopt Option 4.

Mr. Davidian cited the *Gresham, Burner* case, in which a law firm's employees made campaign contributions, and the firm reimbursed those employees. He noted that Enforcement staff would be able to prosecute cases of that kind under current law, so to prohibit the employees of a firm from making contributions is unnecessary, and goes too far.

Ms. Menchaca suggested that staff develop an "in-between" option for the Commission.

Commissioner Makel supported Ms. Menchaca's suggestion.

Tony Miller noted that the State Board of Equalization has a statute similar to Section 84308 that could provide guidance.

Senior Commission Counsel Melodee Anderson noted that the FPPC's *Eaves* case involved many of the questions about employee contributions brought up in this discussion, and could be helpful in formulating an "in-between" option.

The Commission agreed that the options presented by staff for dealing with the agency issue required further work.

Mr. Russo then made a brief presentation about the third issue being presented to the Commission, about whether Regulation 18438.4 should be amended to further clarify the scope of the terms "party" and "participant," as they apply to business entities. He explained that the definitions contained in Section 84308 have created some confusion when applied to corporations and their subsidiaries, as well as contractors and their sub-contractors. He then noted that Options 5 and 6, being presented for the Commission's for consideration, were intended to alleviate that confusion.

Ms. Donovan objected to the proposal in Option 5 that parent and subsidiary entities be included within the meaning of the term "party." She stated that the legislation enacting Section 84308 already included such entities within the meaning of the term "participant," but it did not include them within the meaning of the term "party." She stated that to try to include them within the definition of "party," by amending a regulation, would be to act in conflict with the statute, and would be contrary to the Commission's previous interpretations of Section 84308.

Mr. Davidian agreed with Ms. Donovan, and added that he believed Option 5 is too broad, and would exceed the scope of the statute. He suggested that Option 5 would open a "can of worms."

Commissioner Swanson commented that Option 5 is too complicated, and suggested that it be left out.

The Commission agreed that staff should do further work on this project, and return it to the Commission for another pre-notice discussion.

The meeting adjourned at 3:07 p.m.

Dated: May 5, 2000

Respectfully submitted,

Sandra A. Johnson
Executive Secretary

Approved by:

Chairman Getman